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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/694,731

10/29/2003

William Dai

58268.00341

4032

32294 7590 06/26/2007
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EXAMINER

PHAN, TRI H

ART UNIT

PAPER NUMBER

2616

MAIL DATE

DELIVERY MODE

06/26/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/694,731	Applicant(s) DAI ET AL.	
	Examiner Tri H. Phan	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/29/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Communication(s)

1. This Office Action is in response to the Application filed on October 29th, 2003. Claims 1-50 are now pending in the application.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-50 of the current application are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-43 of U.S. Patent No. 6,658,016 (hereinafter refer as '8016'). Although the conflicting claims are not identical, they are not patentably distinct from each other; because claims in the continuation are broader than the ones in patent, *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982) and *In re Goodman*, 11 F.3d 1046, 29 USPQ 2d 2010 (Fir. Cir.1993), thus, broadened claim in continuation are rejected as obvious double patenting over previously patented narrow claims.

Claims 1-43 of patent '8016' teach essentially the same means as claims 1-43 of the current application, except that claims 1-43 of the current application are broadened by omitting certain limitations, for example, "*means forming a data ring, means forming a control ring, and means forming a plurality of data communication network links ...thereto; ...said control messages further including ... to said associated destination network port.*" in claim 1 of the current application; and "*means forming a data ring ..., means forming a control ring; means forming a plurality of data communication network links ...thereto;*" in claim 27 of the current application. It has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. *In re Karlson*, 136 USPQ 184(CCPA). Also note *Ex parte Rainu*, 168 USPQ 375(Bd. App. 1969); omission of a reference element whose function is not needed would be an obvious variation.

Claims 1-6 and 20 of patent '8016' teach essentially the same limitations as claims 44-50 of the instant application, for example, "*data ring processing means ..., network interface means*

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..., *packet buffer means* ..., *source managing means* ..., *control ring processing means* ..., *destination managing means* ..."; which provides the same functionalities as the recited limitations "*data ring processor* ..., *network interface* ..., *packet buffer* ..., *source manager* ..., *control ring processor* ..., *destination manager* ..." of the instant application. Such the variant limitations would have been obvious since they perform the same functions as cited limitations claimed in the patent '8016'.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dabecki et al. (U.S.6,496,516), **Wong et al.** (U.S.6,363,077 and U.S.2002/0141412), **Chao et al.** (WO 00/52889) and **Dai et al.** (WO 99/39478) are all cited to show devices and methods for improving the switching device in the ring packet switching fabric architectures, which are considered pertinent to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri H. Phan, whose telephone number is (571) 272-3074. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on (571) 272-3179.

Any response to this action should be mailed to:

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Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(571) 273-8300

Hand-delivered responses should be brought to Randolph Building, 401 Dulany Street, Alexandria, VA 22314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office, whose telephone number is (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri H. Phan
June 22, 2007

A handwritten signature in black ink, appearing to read 'W. Chin', with a long horizontal line extending to the right.

WELLINGTON CHIN
SENIOR PATENT EXAMINER